SEP 20 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1951.

No. 342

WARREN COUNTY, MISSISSIPPI,

Petitioner,

versus

C. E. HESTER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF MADISON PARISH, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

L. W. BROOKS,
LANDMAN TELLER,
C. W. PHILLIPS,
Counsel for Petitioner.

Of Counsel:
TAYLOR, PORTER, BROOKS, FULLER & PHILLIPS,
VOLLOR, TELLER & BIEDENHARN.

INDEX

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	5
STATUTES INVOLVED	7
STATEMENT	7
SPECIFICATION OF ERRORS TO BE URGED	9
REASONS FOR GRANTING WRIT	10
CONCLUSION	18
APPENDIX I-IV—STATUTES	20

CITATIONS

Cases:

Alaska Packers Association vs. Industrial Accident Comm., 294 U. S. 532	14
Bradford Elec. Light Co. vs. Clapper, 286 U. S. 145	14
Broderick vs. Rosner, 294 U. S. 629	14
Detroit International Bridge Co. vs. Corp. Tax App. Bd., 294 U. S. 83	15, 16
Henderson Bridge Co. vs. Ky., 166 U. S. 150	15, 16
Martin vs. La. Central Lbr. Co., 150 La. 157, 90 So. 553	12
Shelley vs. Kraemer, 334 U. S. 1	13
Tulane Educ. Fund vs. Bd. of Assessors, 38 La. Ann. 292	12
Williams vs. State of North Carolina, 317 U. S. 287, 63 S. Ct. 207, 87 L. Ed. 279, 143 A. L. R. 1273	14

CITATIONS—(Continued)

PAGE

Constitutional Provisions and Statutes:
Constitution of the United States 28
Article I, Sec. 8, Clause 3 .....2, 4, 15, 28
Article IV, Secs. 1 and 2 .....13, 28
Fourteenth Amendment 2, 3, 5, 6, 9, 11, 28
Act of May 3, 1926 (Public 170—69th Cong.), 44 Stat. 388 .....7, 11, 20
Act 287 of 1944 (La.) (R. S. 48:851 et seq.) 15
Sec. 12 (R. S. 48:886) 26
Sec. 18 (R. S. 48:881) 10, 14, 26
Chapter 283 of Laws of Mississippi of 1938 15
Sec. 13 .....11, 16, 24
Sec. 19 .....10, 14, 16, 24

Miscellaneous:
Constitution of Louisiana—
Article X, Section 4, Subsection 1 2
Article X, Sec. 4, Subsec. 13 .....17, 18
Act 330 of 1938 (La.) 8
Act of March 23, 1906, 33 U. S. C. A. 491 et seq. 21

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. .....

WARREN COUNTY, MISSISSIPPI,
Petitioner,

versus

C. E. HESTER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF MADISON PARISH, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

OPINIONS BELOW

The opinion and judgment of the Trial Court is found in the transcript of record, pages 45-62 inclusive. The opinion and judgment of the Supreme Court of the State of Louisiana (as yet unreported) is found in the transcript of record, pages 74-82 inclusive. The refusal to grant rehearing is found in the transcript of record, page 91.

JURISDICTION

The judgment of the Supreme Court of Louisiana was entered on May 28, 1951 (R. 74). A petition for rehearing was timely filed on June 11, 1951 (R. 83) and was denied on June 29, 1951 (R. 91), on which date the judgment became final. The jurisdiction of this Court is invoked pursuant to U. S. C. A., Title 28, Section 1257 (3).

Through petitioner's original complaint (R. 3) several important Federal issues, constitutional and statutory, were brought to the fore. Among these contentions, which were initially advanced and throughout maintained, were: (a) That the tax sought to be imposed by respondents was discriminatory and in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Federal Constitution, and (b) that the asserted tax imposed an undue burden on interstate commerce in violation of Article I, Section 8, of the Federal Constitution. The trial Court held that there was no discrimination in violation of the Fourteenth Amendment (R. 45, 56) and that the tax imposed was not violative of the commerce clause (R. 45, 53 et seq.).

The Supreme Court of the State of Louisiana reviewed the holdings of the Trial Court on both of these Federal constitutional questions. The Constitution of Louisiana exempts "all public property" from taxation; *but the State Court held that provision afforded no tax exemption to Petitioner, a political sub-

* Art. X, Sec. 4, subsec. 1.

division of Mississippi. This conclusion was bottomed upon the reasoning that petitioner held the public Vicksburg interstate bridge (so far as Louisiana was concerned) in a private capacity. But then, because Petitioner was and is a political subdivision of another state, the Louisiana Court concluded its opinion by announcing a legal principle expressly denying to Petitioner the shield and benefits of the due process and equal protection clauses of the Fourteenth Amendment available to and protecting all other owners of property. This results to place Petitioner, in its ownership and operation of this interstate bridge, at the mercy of the Louisiana taxing authorities. We quote from the opinion of the Louisiana Supreme Court:

> "Aside from other considerations, it is plain that the Fourteenth Amendment of the Federal Constitution, declaring that no state shall deprive any person of life, liberty or property without due process of law nor deny any person within its jurisdiction the equal protection of the laws, is utterly without application to the political subdivisions of a state, which cannot be viewed as a person without the purview of the constitutional provision. See Shelby vs. City of Pensacola (Fla.) 151 So. 53; Riley vs. Stack (Cal.) 18 P. (2d) 110 and Los Angeles County vs. Superior Court (Cal.) 18 P. (2d) 112." (R. 82.)

The correctness of this conclusion was specifically assailed below. See Section IX of Petition for Rehearing (R. 87).

The State Supreme Court held that the tax in question did not constitute an undue burden on interstate commerce. We quote:

> "It is also urged by counsel that the tax is void, being violative of Section 8 of Article 1 of the Federal Constitution, as an undue burden on interstate commerce. Counsel acknowledge that the Supreme Court of the United States, in Henderson Bridge Co. vs. Kentucky, 166 U. S. 150, 17 S. Ct. 532, 41 L. Ed. 953, has ruled directly to the contrary, holding that the operation of a toll bridge between states is not an interstate business. But they suggest that the dissenting opinion in that case (it was a five to four decision) be adopted *in the light of the facts of the case at bar.* For our part, we see no reason to disagree with the Supreme Court of the United States aside from the fact that the decision in the Henderson Bridge Co. case has been approved in Detroit Int. Bridge Co. vs. Corporation Tax Appeal Board, 294 U. S. 83, 55 S. Ct. 332, 89 L. Ed. 777." (R. 81-82)—(Emphasis added.)

Petitioner also in the State Court raised issues as to the impact of the applicable Act of Congress and of the laws of Mississippi. Though not expressly made the subject of decision by the Supreme Court of Louisiana, an entire subdivision of petitioner's brief below was devoted to the proposition that: "Plaintiff is here performing public functions and 'full faith and credit clause' of Constitution of United States requires this Court to so hold". See also Section VII (R. 87) and Section X (R. 88) of Petition for Rehearing. Further, the decision entered below itself de-

nied to petitioner the "equal protection" of the admitted law of Louisiana. The Supreme Court of Louisiana held: "It is manifest that, if the Vicksburg Bridge was dedicated to the public use by plaintiff after its acquisition in 1947, the property became constitutionally exempt from taxes for the year 1948". (R. 78). But then the Supreme Court of Louisiana nullified, so far as this petitioner is concerned, the constitutional exemption afforded by that state by entering an unjustified factual conclusion that the devotion of all net revenues from all sources to paying the cost of the acquisition was not a public use of these funds. This resulted to deny petitioner due process and the equal protection of the laws of the State of Louisiana. This issue was appropriately raised in the Application for Rehearing (Sections V to VIII thereof, R. 85-87), and in petitioner's printed brief in support thereof, from which we quote in summary:

> "Wherefore, under the settled law (recognized in the Court's opinion as being the law) the conclusion reached, denying the exemption, results to deprive Appellant, in its ownership and operation of this public bridge, of the 'equal protection' of the established and admitted jurisprudence."

QUESTIONS PRESENTED

1. Whether a political subdivision of the State of Mississippi may invoke the due process and equal protection clauses of the Fourteenth Amendment in

connection with its ownership and operation of an interstate bridge (necessarily located partly within Louisiana) when the courts of Louisiana, to prevent the application of its laws exempting public property, have held that the Mississippi political subdivision holds the property in a private capacity.

2. Whether the imposition of *ad valorem* taxes by the State of Louisiana constitutes an undue burden on interstate commerce when the interstate bridge so taxed is owned by a public political subdivision of the State of Mississippi, and the bridge has been, since its acquisition, operated without profit to the owner and in compliance with state and Federal statutes providing that, when the revenue bonds issued to defray its cost are retired, the bridge shall become toll-free.

3. Whether the Supreme Court of the State of Louisiana may ignore the admitted facts embodied in a joint stipulation and arrive at an unjustified factual conclusion which resulted to deny petitioner the benefits of the very law and jurisprudence enunciated by that court, thereby to discriminate against petitioner in violation of the Fourteenth Amendment of the Federal Constitution.

4. Whether the Supreme Court of Louisiana can fail to give full faith and credit to the declarations of a Mississippi statute proclaiming the operation by petitioner of this interstate bridge the performance of essential governmental functions, especially when the

principles of comity and common logic otherwise dictate.

STATUTES INVOLVED

The pertinent constitutional and statutory provisions are printed in Appendix I-IV, infra pages 20-28.

STATEMENT

The petitioner, a political subdivision of the State of Mississippi, is the owner of a combined railway and highway interstate bridge spanning the Mississippi River, with its western terminus within the State of Louisiana. This bridge forms a link in U. S. Highway 80, a transcontinental thoroughfare bridling the nation from the Atlantic to the Pacific Ocean. The bridge was, on April 30, 1947, purchased by petitioner from a private corporation for the sum of $7,000,000. This acquisition was authorized by Act of Congress (Public Act 170, 69th Congress, H. R. 9758—Appendix I) and by Chapter 283 of the Laws of Missippi for the year 1938. The Mississippi statutes expressly provided that the acquisition and operation of this bridge by petitioner would "constitute performance of essential governmental functions". The Legislature of Louisiana had passed a virtually identical statute (Act 287 of 1944). Both state acts and the Act of Congress require petitioner to devote all net earnings to the amortization of the purchase

price and thereupon to free the bridge of tolls to the general traveling public. From and after petitioner's acquisition, the bridge has admittedly been operated pursuant to all applicable laws, with the prime objective of making it toll-free. That this bridge will soon become toll-free if not unduly taxed by Madison Parish, Louisiana, is attested by the fact that at the time of the trial (April, 1950), the petitioner had actually retired or provided for the payment of two millions of its bridge revenue bonds.

No taxes are paid by petitioner within the State of Mississippi or to the Federal Government. However, Madison Parish imposed an *ad valorem* tax on that portion of the bridge lying within the confines of Louisiana. Complying with the applicable Louisiana Statute (Act 330 of 1938), petitioner necessarily paid these taxes under protest and then timely brought suit to recover the amount paid. The principal facts were jointly stipulated by the litigants (R. 62). The Trial Court rendered judgment on December 7, 1950, rejecting petitioner's demands (R. 45). On appeal, the Supreme Court of the State of Louisiana, on May 28, 1951, affirmed (R. 74). A petition for rehearing was timely filed (R. 83), was entertained and was denied June 29, 1951 (R. 91). The mandate was stayed (R. 90).

Although only 1948 taxes are here directly at issue, the freeing of this bridge from tolls to the general traveling public largely hinges on this Court's decision.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of the State of Louisiana erred:

1. After holding (even though erroneously) that petitioner owned this interstate bridge as to the portion thereof within Louisiana in a private capacity, in then holding that petitioner was expressly shorn of the protection and benefits of the due process and equal protection clauses of the Fourteenth Amendment because petitioner was a political subdivision of another state.

2. In holding that petitioner's ownership and operation of this bridge as to the portion thereof in Louisiana was not in the performance of essential governmental functions, thereby failing to give full faith and credit to the laws of Mississippi otherwise so declaring and requiring this bridge to be made toll-free.

3. In holding that the imposition of these *ad valorem* taxes was not an undue burden on interstate commerce.

4. In failing to give effect to the identical provisions of the statutory laws of both Louisiana and Mississippi, declaring these bridge properties tax exempt when, by these laws and said Act of Congress, the bridge is required by petitioner to be made toll-free to the general public.

5. In depriving petitioner of the equal protection of the admitted law of Louisiana thereby denying

to petitioner due process of law through an unwarranted factual conclusion that petitioner was not making a public use of the bridge revenues by devoting them to the retirement of its bridge revenue bonds.

REASONS FOR GRANTING WRIT

1. The exemption by Louisiana accorded to "all public property" was denied petitioner in that the state court held that exemption "has reference *only* to property of Louisiana and its political subdivisions" (R. 76). Petitioner was not recognized as having any public status in Louisiana. No regard was had by the Court below to the fact that, at Section 19 of Chapter 283 of the Laws of Mississippi of 1938, this interstate bridge, as owned and operated by petitioner, was declared to be "public property used for public purposes" in the "performance of essential governmental functions"—a provision similar to Sec-18 of Louisiana Act 287 of 1944. Therefore, petitioner was by the Louisiana courts assigned in this litigation the position of a private person. But then the Louisiana Supreme Court expressly denied petitioner the protection and benefits of the Fourteenth Amendment of the Federal Constitution on the premise that these constitutional guarantees (due process and equal protection of the law) are "utterly without application to the political subdivisions of a state, which cannot be viewed as a person within the purview of the constitutional provision" (R. 82). Divested of its

sovereignty, petitioner, having the burdens of an individual person, is and was entitled to the rights of an individual person and consequently to the protection afforded by the due process and equal protection clauses of the Fourteenth Amendment.

Standing unaltered, this decision denies petitioner the protection of the Fourteenth Amendment, and may well produce or result in:

(1) confiscation of petitioner's bridge properties by continuing tax increases;*

(2) delaying unreasonably and arbitrarily the freeing from tolls of this interstate bridge to the detriment of the traveling public nation-wide; and

(3) preventing petitioner from fulfilling the toll-free requirements of the Act of Congress (Section 5 of said Public Act 170) and of Section 13, Chapter 283 of Mississippi Laws of 1938.

If such be the law, then no single state or political subdivision thereof can safely, if at all, finance the construction or acquisition of an interstate bridge, even though the authority of Congress be obtained. The question here posed for review under the Fourteenth Amendment to the Federal Constitution is one in which every state has an interest and which the

* When this bridge was owned by a private Delaware corporation, the highest assessed valuation ever placed thereon within the State of Louisiana was $1,200,000. Although there has been no general raise by Madison Parish of other properties located therein, since petitioner's public acquisition in 1947 this assessment, by successive raises, has been fixed at $3,150,000. Suit is presently pending in the United States District Court for the Western District of Louisiana, seeking to assert the discrimination in violation of the Fourteenth Amendment, the protection of which amendment the Supreme Court of Louisiana has declared unavailable to petitioner.

states, their taxpayers and the traveling public generally are entitled to have settled by this Honorable Court.

2. The Supreme Court of Louisiana reaffirmed the doctrine enunciated in *Tulane Educational Fund vs. Board of Assessors,* 38 La. Ann. 292, and *Martin vs. Louisiana Central Lumber Company,* 150 La. 157, 90 So. 553, holding it to be "the well settled jurisprudence that 'property dedicated to a public use, the revenues of which serve a public purpose, is public property, although the title be not in the public' " (R. 78). Then the court below, in asserted recognition of the foregoing law, announced:

> "Accordingly, it is manifest that, if the Vicksburg bridge was dedicated to the public use by plaintiff after its acquisition in 1947, the property became constitutionally exempt from taxes for the year 1948." (R. 78.)

Nevertheless, the Louisiana court denied petitioner the "equal protection" and benefit of this admitted jurisprudence by reaching the unwarranted factual conclusion that the application of all net revenues toward amortizing the cost of the bridge was not a public use of such funds. It was solemnly stipulated that, following petitioner's acquisition, this bridge has been operated "strictly in accordance with the dictates and provisions of . . . the laws applicable thereto" and that petitioner has devoted "all of the net earnings thereof to the retirement of the revenue bonds issued as aforeshown" (R. 64—from "D" of

Join Stipulation). Otherwise, it was admitted that petitioner has operated this bridge "economically and efficiently with all net revenues being devoted to the retirement of the revenue bonds of said county" (R. 72—from "H" of Joint Stipulation).

By law, Congressional and State, this interstate bridge will be toll-free to the general traveling public when the bonds issued to enable its acquisition by the public are retired. The funds thus assembled and utilized to gain this goal are for a public purpose and use. When the Supreme Court of Louisiana unjustifiably otherwise declared, it wrongfully denied petitioner the tax exemption assured by the admitted laws of Louisiana. This action of this state court denied to petitioner "due process" and the "equal protection" of the law within the meaning of the Fourteenth Amendment. *Shelley vs. Kraemer,* 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161.

3. The Supreme Court of Louisiana, upon the stipulated facts, was not authorized to draw the factual conclusion that the retirement of petitioner's revenue bonds in order to make this interstate bridge toll-free to the general traveling public was not a public use of the bridge revenues. Moreover, through this conclusion, the Louisiana Court failed to accord full faith and credit to the statutory law of Mississippi in violation of Section I, Article IV, of the Federal Constitution. The Legislatures of both Louisiana and Mississippi have respectively declared:

"BRIDGES AND BONDS EXEMPT FROM TAXATION.

"The exercise of the powers conferred by this act constitute the performance of essential governmental functions, and as bridges which are owned and operated by municipalities (Parishes) constitute public property used for public purposes, such bridges shall at all times be free from taxation within the state (the Louisiana Act referring to Louisiana, the Mississippi Act referring to Mississippi), and no municipality (Parish) shall be required to pay taxes or assessments upon any such bridge *or any part thereof,* owned by it, *whether located within or without the corporate limits of such municipality* (Parish)", etc.

—from Section 18, Act 287 of 1944, (La. Acts) and Section 19, Chapter 283, Laws of 1938 of Mississippi.

Even on principles of comity, the conclusion of the Louisiana Court was unauthorized as well as being constitutionally abhorrent. This Court has exercised its power to conform conflicting statutes of two states. This case cries even more for the exercise of such power where the legislative policies of the states conform, but the state court has arbitrarily ignored the provisions of its own legislation, as well as the legislation of its sister state. *Williams vs. State of North Carolina,* 317 U. S. 287, 63 S. Ct. 207, 87 L. Ed. 279, 143 A. L. R. 1273; *Broderick vs. Rosner,* 294 U. S. 629, 55 S. Ct. 589, 79 L. Ed. 1100, 100 A. L. R. 1133; *Alaska Packers Association vs. Industrial Accident Commission,* 294 U. S. 532, 55 S. Ct. 518, 79 L. Ed. 1044; *Bradford Electric Light Co. vs.*

Clapper, 286 U. S. 145, 52 S. Ct. 571, 76 L. Ed. 1026, 82 A. L. R. 696.

This bridge is one entire and indivisible structure. When the cost of the acquisition is amortized, it will be free and of equal benefit in Louisiana and Mississippi alike. The traveling public nationwide is the prospective beneficiary of petitioner's public ownership and operation of this bridge. Any distinction, based upon mere geographical state-line considerations, is artificial and unrealistic. The bridge cannot be half free and half slave, nor half public and half private. Consequently, the Louisiana Court should have accorded full faith and credit to the statutory laws of Mississippi, which coincide with its own (Chapter 283 of Laws of Mississippi of 1938, Act 287 of 1944 of Louisiana).

4. Petitioner, as the Louisiana Supreme Court pointed out "in the light of the facts of the case at bar" has submitted that the tax imposed does violence to the commerce clause, Section 8 of Article I of the Federal Constitution. This contention is not put at rest by the decisions of this Court in *Henderson Bridge Co. vs. Ky.*, 166 U. S. 150, 17 S. Ct. 532, 41 L. Ed. 953, and *Detroit International Bridge Co. vs. Corporation Tax Appeal Board,* 294 U. S. 83, 55 S. Ct. 332, 79 L. Ed. 777. In both of those cases state franchise taxes were upheld against wholly private corporations. No free medium of interstate commerce was there even in contemplation.

Here, the *ad valorem* tax imposed by respondents, if upheld, works a direct and real obstacle to this publicly owned interstate bridge becoming toll-free to the general public traveling in actual interstate commerce. The tax casts an undue burden upon interstate commerce in that it will manifestly postpone, if not ultimately defeat, the day when the bridge will be toll-free to the general public.

Both said Act of Congress (Section 5 thereof) which authorized and encouraged public ownership by petitioner and the Statute of Mississippi (Section 13 of said Chapter 283—Appendix II) require all net bridge revenues to be devoted to defraying the cost of the acquisition and provide that thereafter, by law, this bridge shall be free to the general public.

Throughout this nation, states and political subdivisions are now financing such interstate structures as petitioner's bridge through the issuance of revenue bonds, which are retired through tolls charged for the use of the structure. It is not thought that in the *Henderson* and *Detroit* cases, *supra,* this Court ever intended that one state might tax the properties of another state which were so vital to the flow of interstate commerce, and yet the Supreme Court of Louisiana has held that it may tax this interstate bridge, operated for the welfare of the people of this entire country, and, even further, that it may deny the public owner due process and confiscate this property through taxation.

Whether or not the public owner of a public interstate bridge can be taxed by a political subdivision of an adjoining state provokes an important question nationwide. Petitioner does not believe that this issue, under the commerce clause of the Federal Constitution, has been determined by this Court. It is apparent at bar that, even after all the costs of the acquisition have been amortized, respondents will continue to tax this bridge. The exaction of toll charges may well be continued to satisfy respondents' tax levies, the burden of which those traveling over this bridge in interstate commerce must continue to bear. The tax which now serves to delay the date when this interstate bridge will be toll-free will then be a direct cause of tolls continuing. Free intercourse between the states is thereby deterred. As to all of which this Honorable Court's determination, on this important question of nationwide concern, is respectfully elicited.

5. Article X, Section 4, Subsection 13, of the Constitution of Louisiana expressly exempted from taxation all bridges thereafter constructed which cross the Mississippi River *"when owned"* even by another state or political subdivision thereof, "where it is proposed that said bridge shall be operated free of tolls after a sinking fund shall have been provided from tolls sufficient for the amortization of the cost of the bridge". The Louisiana Court erroneously concluded that this provision did not afford tax exemption to petitioner. The construction resorted to violated the due process clause of the Fourteenth

Amendment, resulting in an arbitrary and unauthorized classification of petitioner's bridge. The stipulation of facts discloses that there are five bridges spanning the Mississippi River south of Memphis, Tennessee, three of which exact tolls against the general traveling public. The Vicksburg Bridge is the only one of the four bridges which are in or touch upon the State of Louisiana against which any taxes are sought to be imposed. This classification is believed to be both arbitrary and unconstitutional.

The construction adopted below leads to the unjust result that no bridge across the Mississippi River in the vicinity of Vicksburg (unless an unneeded and new duplicating bridge) can, under said Subsection 13 of the Louisiana Constitution, receive an exempt classification. This construction, to enable that provision constitutional validity, should have been avoided and the exemption allowed petitioner; otherwise petitioner is denied and will be denied due process of law. Manifestly this consequence was not considered below in that petitioner was there held not entitled to the protection of the Fourteenth Amendment of the Federal Constitution.

CONCLUSION

The issues at bar are serious and of nationwide importance. The interstate bridge involved (located at a historic and strategic gateway to the southwest)

serves as a vehicle of nationwide highway intercourse between the states—for all citizens of this nation alike. Can a single Parish of a State, or one state alone, delay and defeat free access among the states by denying due process, by denying the equal protection of its laws and by failing to accord full faith and credit to the laws of its sister state? And can a single state, by direct taxation (foregoing discriminatory levies and taxation untramelled by the limits of the due process clause), impose a burden on commerce between the states of this nation? These problems, it is believed, merit consideration and decision by this Court.

Seeking to comply with Rule 38(2) of this Court requiring conciseness and brevity, Petitioner has not advanced all of the arguments which will be urged if this petition is granted, nor has petitioner sought to cite, much less discuss, all of the precedents supporting its contentions. Such an opportunity is reserved for the hearing should this Court grant certiorari.

For the reasons herein assigned and apparent, this petition for a writ of certiorari should be granted.

Respectfully submitted,

L. W. BROOKS,
C. W. PHILLIPS,
LANDMAN TELLER,
Counsel for Petitioner.

Of Counsel:
TAYLOR, PORTER, BROOKS, FULLER & PHILLIPS,
VOLLOR, TELLER & BIEDENHARN.
September 19, 1951.

APPENDIX I

Act of May 3, 1926 (Public 170—69th Congress), 44 Stat. 388.

An Act Granting the consent of Congress to the Vicksburg Bridge and Terminal Company to construct, maintain and operate a bridge across the Mississippi River at or near the City of Vicksburg, Mississippi.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby granted to the Vicksburg Bridge and Terminal Company, its successors and assigns, to construct, maintain and operate bridge and approaches thereto across the Mississippi River, at a point suitable to the interests of navigation, between a point in the City of Vicksburg, Mississippi, at or near the crossing of the Dixie Overland Highway, and a point opposite in the State of Louisiana, at or near the continuation of the Dixie Overland Highway, in accordance with the provisions of the Act, entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906, [33 U. S. C. A. 491 et seq.] and subject to the conditions and limitations contained in this Act.

Sec. 2. There is hereby conferred upon the said Vicksburg Bridge and Terminal Company, its successors and assigns, all such rights and powers to enter upon lands and to acquire, condemn, appropriate, occupy, possess, and use real estate and other property needed for the location, construction, opera-

tion and maintenance of such bridge and its approaches and terminals as are possessed by bridge corporations for bridge purposes in the State or States in which such real estate and other property are located upon making just compensation therefor, to be ascertained and paid according to the laws of such State or States, and the proceedings therefor shall be the same as in the condemnation and expropriation of property in such State or States.

Sec. 3. The said Vicksburg Bridge and Terminal Company, its successors and assigns, are hereby authorized to fix and charge tolls for transit over such bridge, and the rates so fixed shall be the legal rates until changed by the Secretary of War under the authority contained in such Act of March 23, 1906.

Sec. 4. After the date of completion of such bridge, as determined by the Secretary of War, either the State of Mississippi, the State of Louisiana, any political subdivision of either of such States within or adjoining which any part of such bridge is located, or any two or more of them jointly, may at any time acquire and take over all right, title and interest in such bridge and approaches, and interests in real property necessary therefor, by purchase or by condemnation in accordance with the law of either of such States governing the acquisition of private property for public purposes by condemnation. If at any time after the expiration of twenty years after the completion of such bridge, it is acquired by condemnation, the amount of damages or compensation to be allowed shall not include good will, going value or prospective revenues or profits, but shall be limited to the sum of (1) the actual cost of constructing such

bridge and approaches, less a reasonable deduction for actual depreciation in respect of such bridge and approaches; (2) the actual cost of acquiring such interests in real property; (3) actual financing and promotion costs (not to exceed 10 per centum of the sum of the cost of construction of such bridge and approaches and the acquisition of such interests in real property), and (4) actual expenditures for necessary improvements.

Sec. 5. If such bridge shall be taken over and acquired by the States or political subdivisions thereof under the provisions of Section 4 of this Act, the same may thereafter be operated as a toll bridge; in fixing the rates of toll to be charged for the use of such bridge, the same shall be so adjusted as to provide as far as possible a sufficient fund to pay for the cost of maintaining, repairing and operating the bridge and its approaches, to pay an adequate return on the cost thereof, and to provide a sinking fund sufficient to amortize the amount paid therefor within a period of not to exceed thirty years from the date of acquiring the same. After a sinking fund sufficient to pay the cost of acquiring such bridge and its approaches shall have been provided the bridge shall thereafter be maintained and operated free of tolls or the rates of toll shall be so adjusted as to provide a fund not to exceed the amount necessary for the proper care, repair, maintenance and operation of the bridge and its approaches. An accurate record of the amount paid for acquiring the bridge and its approaches, the expenditures for operating, repairing and maintaining the same and of the daily tolls collected shall be kept, and shall be available for the information of all persons interested.

Sec. 6. The said Vicksburg Bridge and Terminal Company, its successors and assigns, shall, within ninety days after the completion of such bridge, file with the Secretary of War a sworn itemized statement showing the actual original cost of constructing such bridge and its approaches, including the actual cost of acquiring interests in real property and actual financing and promotion costs. Within three years after the completion of such bridge the Secretary of War may investigate the actual cost of such bridge, and for such purposes the said Vicksburg Bridge and Terminal Company, its successors and assigns, shall make available to the Secretary of War all of the records in connection with the financing and construction thereof. The findings of the Secretary of War as to such actual original cost shall be conclusive, subject only to review in a court of equity for fraud or gross mistake.

Sec. 7. The right to sell, assign, transfer and mortgage all the rights, powers and privileges conferred by this Act is hereby granted to the said Vicksburg Bridge and Terminal Company, its successors or assigns, and any corporation to which such rights, powers and privileges may be sold, assigned or transferred, or which shall acquire the same by mortgage foreclosure or otherwise, is hereby authorized and empowered to exercise the same as fully as though conferred herein directly upon such corporation.

Sec. 8. The right to alter, amend or repeal this Act is hereby expressly reserved.

Approved May 3, 1926.

APPENDIX II

Chapter 283 of Laws of Mississippi of 1938.

Section 13:

"Cessation of Tolls. When the particular bonds issued for any bridge or bridges and the interest thereon shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, the municipality issuing such bonds shall cease to charge tolls for the use of such bridge or bridges and thereafter such bridge or bridges shall be free, unless tolls are required for maintaining, repairing, and operating such bridge or bridges due to the lack of funds from other sources than tolls; but above provisions shall not apply to common carriers, transportation companies, bus lines and any one transporting passengers or freight for hire, but shall apply only to the use of highway portion of bridge by traveling public and as respects any other use the municipality may continue to fix and collect such tolls and charges as it may deem in the public interest."

Section 19:

"Bridge and Bonds Exempt from Taxation. The exercise of the powers conferred by this act constitute the performance of essential governmental functions, and as bridges which are owned and operated by municipalities constitute public property used for public purposes, such bridges shall at all times be free from taxation within the state, and no municipality shall be required to pay taxes or assessments upon any such bridge or any part thereof, owned by it, whether located within or without the corporate

limits of such municipality, and bonds issued under the provisions of this act, their transfer and income therefrom (including any profits made on the sale thereof) shall at all times be free from taxation within the state."

APPENDIX III

Act 287 of 1944 of Louisiana (R. S. 48:851 et seq.)

Section 12 (R. S. 48:886):

"Cessation of Tolls. When the particular bonds issued for any bridge or bridges and the interest thereon shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, the Parish issuing such bonds shall cease to charge tolls for the use of such bridge or bridges and thereafter such bridge or bridges shall be free, unless tolls are required for maintaining, repairing, and operating such bridge or bridges due to the lack of funds from other sources than tolls; but the above provisions shall not apply to common carriers, transportation companies, bus lines and any one transporting passengers or freight for hire, but shall apply only to the use of the highway portion of the bridge by the traveling public and as respects any other use, the Parish may continue to fix and collect such tolls and charges as it may deem in the public interest."

Section 18 (R. S. 48:881):

"Bridge and Bonds Exempt from Taxation. The exercise of the powers conferred by this act constitute the performance of essential governmental functions, and as bridges which are owned and operated by Parishes constitute public property used for public purposes, such bridges shall at all times be free from taxation within the state, and no Parish shall be required to pay taxes or assessments upon any such bridge or any part thereof, owned by it, whether located within or without the corporate

limits of such Parish, and bonds issued under the provisions of this act, their transfer and the income therefrom (including any profits made on the sale therefrom (including any profits made on the sale thereof) shall at all times be free from taxation within the state and otherwise as may be allowed by any law."

APPENDIX IV

Constitution of the United States.

Article 1, Section 8, Clause 3:

"The Congress shall have Power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; * * *"

Article IV, Sections 1 and 2:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. * * *"

Fourteenth Amendment, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Office-Supreme Court, U.S.
FILED
OCT 15 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 342

WARREN COUNTY, MISSISSIPPI,
Petitioner,

vs.

C. E. HESTER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF MADISON PARISH, ET AL.,
Respondents.

BRIEF OF RESPONDENTS FILED IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

F. G. HUDSON, JR.,
Monroe, Louisiana,

THOMPSON L. CLARKE,
District Attorney,
St. Joseph, Louisiana,
Attorneys for Respondents.

HUDSON, POTTS, BERNSTEIN
& DAVENPORT,
Of Counsel.

HARTER PRINTING CO., INC., NEW ORLEANS

SUBJECT INDEX

Page

I. No State Statute is here involved but only the proper construction and application of a tax-exemption provision of the Constitution of Louisiana. 1

II. Under Louisiana Law tax-exemptions hinge solely upon Constitution and not legislation. 2

III. Obiter dicta in a State Supreme Court's Opinion affords no basis for review via certiorari. 3

IV. Federal Questions Below 5

V. Statement for Respondent:

(a) Interstate commerce not involved. 7

(b) Full faith and Credit Clause not applicable 7

(c) No interstate compact exists. 8

(d) No want of Due Process Plead. 9

(e) Petitioner not deprived of any equal protection of the law. 9

VI. Conclusion. 18

TABLE OF CASES, TEXTS AND STATUTES

A. T. & S. F. R. vs. R. R. Com'n., 283 U.S. 380, 75 L. Ed. 1128, 51 S. Ct. 605. 3

Am. Jur. 51 Secs. 559, 560, 561. 17

American Sugar Refining Co. vs. State of La., 179 U.S. 89, 21 S. Ct. 43, 44, 45 Ed. 102. 14

Arizona Emp. Liab. Cases, 250 U.S. 400, 63 L. Ed. 1058, 39 S. Ct. 553. 3

Avery vs. Alabama, 308 U.S. 444, 84 L. Ed. 377, 60 S. Ct. 321. 3

Bob Lo. Co. vs. People, 333 U.S. 28, 92 L. Ed. 455, 68 S. Ct. 350. 3

Daniel vs. Family etc. Ins. Co., 336 U.S. 220, 69 S. Ct. 550. 3

Detroit Bridge Co. vs. Cort'n. Com'n., 287 U.S. 295 .. 6, 8

TABLE OF CASES, TEXTS AND STATUTES—Cont'd

	Page
Ex parte Tigner, 310 U.S. 141.	14
Ex parte Worcester Bank, 279 U.S. 347, 73 L. Ed. 733, 49 S. Ct. 368.	3
Federal Const. Art. 1, Sec. 8.	6
Hibernia Nat. Bank vs. La. Tax Com'n., 195 La. 43, 196 So. 15.	4
Ill. Cent. R. vs. Minnesota, 309 U.S. 695, 84 L. Ed. 1035, 60 S. Ct. 585.	3
In re Taylor, 28 F. (2d) 526.	5, 8
Interstate Tax Bureau v. Co., 180 La. 453, 156 So. 463, 465.	15
Klaxon Co. vs. Stentor Co., 313 U.S. 487.	6, 8
L. & A. Ry. Co. v. Shaw, 121 La. 997, 46 So. 994.	14
L. & A. Ry. Co. v. Ark. So. Ry., 218 U.S. 431.	14
La. Const. (1921) Art. 7, Sec. 65.	2
La. Const. (1921) Sec. 4, Art. 10.	11
Lindley v. National Carbonic Co., 270 U.S. 61.	14
Los Angeles County vs. Superior Court (Cal.) 18 P. 2d 112.	10
Madden v. Kentucky, 309 U.S. 83.	14
Milk etc. Union vs. Meadowmoor Dairies, 331 U.S. 486, 91 L. Ed. 1621, 67 S. Ct. 1400 (332 U.S. 784.)	3
Miller vs. City of Greenville, 138 F. 2d 712, 718.	6
Milwaukee Co. vs. White Co., 296 U.S. 268.	6, 8
Musser vs. Utah, 533 U.S. 95, 92 L. Ed. 562, 68 S. Ct. 307.	3
N. O. v. LeBlanc, 139 La. 113, 71 So. 248.	14
Pacific Etc. Co. vs. White, 296 U.S. 176, 80 L. Ed. 138, 56 S. Ct. 159.	3
Peck v. City of N. O., 199 La. 76, 5 So. 2d 508, 517.	14
Quong Wing v. Kirkendall, 223 U.S. 59, 32 S. Ct. 192, 56 L. Ed. 350.	15
Rast v. Van Deman & Lewis Co., 240 U.S. 342, 36 S. Ct. 370, 60 L. Ed. 679.	15

TABLE OF CASES, TEXTS AND STATUTES—Cont'd

Page

Ricks v. Dep't of Civil Service, 200 La. 341, 8 So. 2d 49. 14
Riley vs. Stack (Cal.) 18 P. 2d 110. 10
Senn vs. Tile Etc. Union, 301 U.S. 468, 81 L. Ed. 1229, 57 S. Ct. 857. 3
Shelby vs. City of Pensacola (Fla.) 151 So. 53. 10
Sibley L. B. & So. Ry. v. Elliott, 136 La. 793. 14
Spector Motor Service vs. McLaughlin, 323 U.S. 101, 89 L. Ed. 101, 65 S. Ct. 3
State Board of Tax Com'nrs. of Ind. v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 541, 75 L. Ed. 1248. 15
State ex rel Taggart vs. Holcomb, 116 Pac. 251. 18
State v. Union Bldg. Corp., 185 La. 598, 170 So. 7. 14
State Tax Com'n. vs. Van Cott, 306 U.S. 511, 83 L. Ed. 950, 59 S. Ct. 605. 3
U. S. C. A. Title 28, Section 1259 (3). 1
U. S. Const. Art. 1, Sec. X, Sub-sec. 3. 6
Williams vs. North Carolina, 317 U.S. 287. ..... 5, 8
Yellow Cab Co. vs. Overcash, 133 F. 2d 228. ..... 5, 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 342

WARREN COUNTY, MISSISSIPPI,
Petitioner,

versus

C. E. HESTER, SHERIFF AND EX-OFFICIO TAX COLLECTOR OF MADISON PARISH, ET AL.,
Respondents.

BRIEF OF RESPONDENTS FILED IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

I. *NO STATE STATUTE INVOLVED*

The only basis asserted for jurisdiction here, via Certiorari, is asserted in the application of petitioner (p. 2) to be *"U.S.C.A. Title 28, Section 1257 (3)"*, which, so far as here pertinent reads:

> *"Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:*

> *(3) By Writ of Certiorari, * * * where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution * * * of the United States * * * ".*

No "State Statute" of Louisiana is here attacked as unconstitutional.

The one and only issue here presented by petitioner, Warren County, Mississippi, the owner of an interstate toll bridge, is as to the construction and application of a tax-exemption provision of the Constitution (not statute) of Louisiana, exempting "public property", which the Supreme Court of Louisiana held (Tr. 76):

> "We think it plain that the exemption of all public property has reference only to property of Louisiana and its political subdivisions. There is no reason whatever to believe that the people of Louisiana, in adopting their Constitution, intended to exempt from taxation the local property of foreign countries, other states or their political subdivisions".

Also, the tax here involved is not, as stated on p. 8 of Applicant's petition for Writ, a purely local Parish tax. In Louisiana the Parish Sheriff is, ex-Officio Tax Collector of all *ad valorem* taxes levied by the State and all local subdivisions. *La. Const, (1921) Art. 7, Sec. 65.*

II. *LOUISIANA TAX-EXEMPTIONS ALL CONSTITUTIONAL*

It is elementary that the provisions of a state law, Constitution especially, as to tax exemption, is peculiarly a matter of the public policy of that state; to be determined solely by its law as construed by its Courts, which are the final judicial authority thereasto; and which will

not be interfered with by the United States Supreme Court in the absence of a clear, emphatic and inescapable conflict with the Federal Constitution.

Arizona Emp. Liab. Cases, 250 U.S. 400, 63 L. Ed. 1058, 39 S. Ct. 553;
Ex Parte Worcester Bank, 279 U.S. 347, 73 L. Ed. 733, 49 S. Ct. 368;
Pacific Etc. Co. vs. White, 296 U.S. 176, 80 L. Ed. 138, 56 S. Ct. 159;
Avery vs. Alabama, 308 U.S. 444, 84 L. Ed. 377, 60 S. Ct. 321;
Milk Etc. Union vs. Meadowmoor Dairies, 331 U.S. 486, 91 L. Ed. 1621, 67 S. Ct. 1400 (332 U.S. 784);
Daniel vs. Family etc. Ins. Co., 336 U.S. 220, 69 S. Ct. 550;
Senn vs. Tile Etc. Union, 301 U.S. 468, 81 L. Ed. 1229, 57 S. Ct. 857;
A. T. & S. F. R. vs. R. R. Com'n., 283 U.S. 380, 75 L. Ed. 1128, 51 S. Ct. 553;
St. Tax Com. vs. Van Cott, 306 U.S. 511, 83 L. Ed. 950, 59 S. Ct. 605;
Ill. Cent. R. vs. Minnesota, 309 U.S. 695, 84 L. Ed. 1035, 60 S. Ct. 585;
Spector Motor Service vs. McLaughlin, 323 U.S. 101, 89 L. Ed. 101, 65 S. Ct.
Musser vs. Utah, 533 U.S. 95, 92 L. Ed. 562, 68 S. Ct. 307;
Bob. Lo. Co. vs. People, 333 U.S. 28, 92 L. Ed. 455, 68 S. Ct. 350.

The Supreme Court of Louisiana squarely held that the tax-exemption of "public property" did not apply to the local property owned by Warren County, Mississippi at all—in no event. It rejected the contention of Petitioner that a tax-exemption in Louisiana could be effected by a statute of either Louisiana or Mississippi,

where the law of Louisiana precludes any legislative exemption from taxation. *Hibernia Nat. Bank vs. La. Tax Com'n.*, 195 La. 43, 196 So. 15. (Tr. p. 80):

> "We therefore conclude that the Judge correctly found that **the bridge was not public property** within the exemption specified in *Paragraph 1 of Section 4 of Article 10 of the Constitution.*"

III. *OBITER DICTA*

Arguendo and as *obiter dicta*, purely, the Louisiana Supreme Court did infer—and clearly erroneously because predicated upon an unsound precedent—that were this bridge devoted solely and entirely to a public use only, it might come within the tax-exemption claimed. But, says that Court (Tr. pp. 78-82):

> " * * * But the flaw in plaintiff's position is that the facts do not sustain the conclusion sought. The stipulation of facts merely exhibits that it is not plaintiff's objective to operate the bridge for profit; that it is its present intention 'as soon as the indebtedness of said bridge is retired or sufficiently reduced so that payment can be otherwise assured from other revenues', to abolish the toll charges as to privately owned and operated highway passenger carrying vehicles but not 'as to commercial or common carrier vehicles, railroad cars, pipelines, telegraph and telephone wires and cables or as to any other similar use'. Conceding, for purposes of discussion, that the eventual abolition of tolls on pleasure passenger vehicles will constitute an effective dedication of the structure for public use so as to place it within the constitutional exemption, it is difficult to perceive how plaintiff's intention can be regarded as a consecration of the property to public use. If the revenues derived from the tolls of the bridge were being used exclusively for its maintenance and economic operation, it might be reasonable

to rule that there has been a dedication. But those are not the facts of the case. Actually, plaintiff is employing a substantial part of the revenue derived from tolls charged the general public to liquidate its obligation for the purchase price of the structure. Indeed, to hold that this bridge was dedicated to public use in 1948 merely because plaintiff evinces the intention of making it toll free at some future date, when the truth is that each and every (fol. 201) person using it is required to pay would be unrealistic, to say the least."

IV. *FEDERAL QUESTIONS BELOW*

The so-called Federal Constitutional Issues presented below were:

1. " * * * It is said initially that, since the Mississippi statute makes the bridge tax exempt in that state, the **full faith and credit clause of the Federal Constitution** demands that it be likewise adjudged tax exempt in Louisiana. This proposition, unsupported by authority, is without substance. To approve it would be to accord to Mississippi extraterritorial jurisdiction which, we are sure, she has neither claimed nor assumed in enacting *Chapter 283 of her 1938 laws.*"

In addition it may be noted that the full faith and credit clause of the Federal Constitution was *not injected until this case reached the Louisiana Supreme Court where it was properly ignored* because not an issue but had it been that clause has nothing to do with State jurisdiction or public policy; in tax matters it applies to judgments only and has never been construed to insure extraterritorial recognition of a state statute.

In re Taylor, 28 F. (2d) 526;
Williams vs. North Carolina, 317 U.S. 287;
Yellow Cab Co. vs. Overcash, 133 F. 2d 228;

Klaxon Co. vs. Stentor Co., 212 U.S. 487;
Milwaukee Co. vs. White Co., 296 U.S. 268.

2. That the enactment of practically identical Bridge Revenue Bond Statutes by Louisiana and Mississippi constituted an **"interstate compact"** for tax-exemption of such structures! Citing *U. S. Const. Art. 1, Sec. X, Sub.-Sec. 3.* That contention, also originated in the State Supreme Court and there ignored, has apparently been abandoned here because obviously unsound.

3. That to tax this interstate toll bridge property situated in Louisiana violated the **interstate commerce** clause of the *Federal Constitution (Art. 1, Sec. 8).*

Much was made of this below but little here—so obviously without merit.

Detroit Bridge Co. vs. Cort'n. Com'n., 287 U.S. 295;
Miller vs. City of Greenville, 138 F. (2d) 712, 718.

4. **"Due Process"** and **"Equal Protection".**

It is here petitioner's contention (application p. 11) that the refusal of the Louisiana Supreme Court to extend the public property tax-exemption of the Louisiana Constitution to Louisiana *ad valorem* taxes upon local property of an interstate toll bridge owned by Warren County, Mississippi:

(a) Confiscates petitioner's property, which only earned a net revenue of an approximate $1,000,000.00 per year!

(b) Delays an alleged toll-free date, when it is admitted that when debts are paid tolls will be lifted only as to private passenger vehicles and continued forever as to railroad cars, commercial vehicles, busses, trucks, pipe lines,

telephone and telegraph wires, cables and all utility property using the bridge—to the permanent net profit to Warren County of several hundred thousand dollars per year!

(c) That the taxes prevent petitioner from fulfilling the "requirements" of the Act of Congress authorizing construction of the bridge over the navigable river and of the laws of Mississippi authorizing its acquisition by Warren County as to a "toll-free bridge"! Or, in other words, that a tax-exemption in Louisiana of local taxes was effected by a law of Mississippi or by an Act of Congress, which says not one word about taxes or tax-exemption.

V. *STATEMENT FOR RESPONDENT*

The contentions of petitioner that this Court should review the decision of the Louisiana Supreme Court to the effect that no burden upon interstate commerce is here involved, no full faith and credit requirement is impugned and no interstate compact existed, all run foul of the specific provisions of Rule 38 of this Court and its jurisprudence, that certiorari will not be granted to review a state Court's decision which merely follows the previous decisions of this Court upon the issues presented.

On those three issues the Supreme Court of Louisiana correctly holds:

(a) **Interstate Commerce** (Tr. p. 82):

> " * * * Counsel acknowledge that the Supreme Court of the United States, in *Henderson Bridge Co. vs. Kentucky*, 166 U.S. 150, 17 S. Ct. 532, 41 L. Ed. 953, has ruled directly to the contrary, holding that the operation of a toll bridge between states is not an interstate business. But

they suggest that the dissenting opinion in that case (it was a five to four decision) be adopted in the light of the facts of the case at bar. For our part, we see no reason to disagree with the Supreme Court of the United States aside from the fact that the decision in the *Henderson Bridge Co.* case has been approved in *Detroit Int. Bridge Co. vs. Corporation Tax Appeal Board*, 294 U.S. 83, 55 S. Ct. 332, 89 L. Ed. 777."

(b) **Full Faith and Credit** (Tr. p. 81):

"* * * It is said initially that, since the Mississippi statute makes the bridge tax exempt in that state, the full faith and credit clause of the Federal Constitution demands that it be likewise adjudged tax exempt in Louisiana. This proposition, unsupported by authority, is without substance. To approve it would be to accord to Mississippi extraterritorial jurisdiction which, we are sure, she has neither claimed nor assumed in enacting *Chapter 283 of her 1938 laws.*"

It is elementary that *Sec. 1, Art. IV of the Federal Constitution* has nothing to do with jurisdiction of the several states; (*In re Taylor etc. Co.*, 28 F. 2d 526); that it does not compel any state to subordinate its own public policy to that of another state (*Williams vs. N. Carolina*, 317 U.S. 287) or insure extraterritorial recognition of State Statutes (*Yellow Cab Co. vs. Overcash*, 133 F. 2d 228, *Klaxon Co. vs. Stentor Co.*, 313 U.S. 487). In tax matters it applies to judgments only (*Milwaukee Co. vs. White Co.*, 296 U.S. 268).

(c) **Interstate Compact** (Tr. p. 81):

"We find this contention somewhat difficult to understand. It is apparently predicated on the idea that, since Congress authorized the construction of the bridge and provided that it could be

> acquired by either Louisiana or Mississippi or their political subdivisions, and that, inasmuch as Louisiana and Mississippi have passed laws permitting their own subdivisions to purchase the bridge, this was a compact between the states which should be enforced. Suffice it to say that we think the point untenable for we experience much strain in regarding the legislation of Mississippi (*Chapter 283, Laws of Mississippi of 1938*) and *Louisiana* (*Act 287 of 1944*) to be agreements or compacts between these states."

Since, therefore, the decisions of this Court have settled the law upon those here purported Federal questions and the State decision here merely recognized and followed the same and no basic or policy concept exists necessitating a reversal of or alteration in that settled jurisprudence, no valid reason here exists for the allowance of certiorari upon those asserted Federal questions.

(d) (e) **DUE PROCESS AND EQUAL PROTECTION.**

The only other Federal question asserted is that the *ad valorem* taxation of this bridge property situated in Louisiana when, under other specific constitutional provisions two other interstate Mississippi River Bridges are tax-exempt, constitutes a deprivation of petitioner of due process and a denial of the equal protection of the law in violation of the *Fourteenth Amendment* to the Constitution of the United States.

Upon that point the Louisiana Supreme Court held (Tr. p. 82):

> "Finally, counsel say that taxation of the bridge is discriminatory—and consequently viola-

tive of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States—as all other bridges spanning the Mississippi River south of Memphis, Tennessee, are tax exempt.

"We are unable to discern merit in this contention. Aside from other considerations, it is plain that the Fourteenth Amendment of the Federal Constitution, declaring that no state shall deprive any person of life, liberty or property without due process of law nor deny any person within its jurisdiction the equal protection of the laws, is utterly (fol. 204) without application to the political subdivisions of a state, which cannot be viewed as a person within the purview of the constitutional provision. See *Shelby vs. City of Pensacola (Fla.)* 151 So. 53; *Rilty vs. Stack (Cal.)* 18 P. (2d) 110 and *Los Angeles County vs. Superior Court (Cal.)* 18 P. (2d) 112."

In addition it may be noted that **no question of "Due Process" was plead below** (Tr. p. 7; Pet'n. p. 16):

"The assessment and collection of the said *ad valorem* taxes by the defendant is also unconstitutional, null and void and of no effect in that it is a violation of the provisions of the Fourteenth Amendment to the Constitution of the (fol. 9) United States of America in that the attempt to levy and collect said tax and the refusal to exempt said bridge as public property is a denial to plaintiff of the equal protection of the laws of Louisiana, particularly in view of the fact that the other publicly owned toll bridges, three in number, spanning the Mississippi River either wholly within the State of Louisiana or having one of their termini within the State of Louisiana are all exempt from *ad valorem* taxes within the State of Louisiana".

Furthermore, **no procedural issue is here involved;**

it being admitted that full notice and hearing was afforded this taxpayer.

Thus, petitioner's only really substantial contention here is that because the **New Orleans bridge** is tax-exempt because owned by a Louisiana Public Authority (City of New Orleans), the **Natchez Bridge,** was exempted by a Constitutional amendment adopted in 1938 exempting all such bridges "hereafter constructed", and the **Baton Rouge Bridge** is owned by a state agency (Department of Highways), and the **Greenville Bridge,** between Mississippi and Arkansas was exempted from taxes by the laws of both Arkansas and Mississippi, Petitioner is denied equal protection because its Constitutional tax-exemption (*La. Const. 1921, Sec. 4, Art. 10, pp. 7*) had expired.

It is here stipulated that this Bridge—the **Vicksburg Bridge,** privately owned, was constructed in 1930. It was granted a five year tax-emption, which expired in 1935—though no taxes were levied until one year thereafter. The **Natchez Bridge,** owned by Natchez, Mississippi, was completed in 1940 under a Constitutional Amendment of 1938 exempting all such bridges "hereafter constructed". The **Greenville Bridge,** spanning the river between Mississippi and Arkansas, was completed in 1940, owned by the City of Greenville, was tax-exempted by the laws of both states. The **Baton Rouge Bridge,** owned by the Louisiana Department of Highways, entirely within Louisiana, was completed in 1948. The **New Orleans Bridge,** constructed in 1935, is owned by the City of New Orleans. (Tr. 64-71).

In other words the Baton Rouge and New Orleans Bridges are tax-exempt because "public property",

owned by Louisiana public authority. The Natchez Bridge, built in 1940, was exempted by a specific constitutional amendment of 1938, enacted to encourage it and similar projects. The Greenville Bridge does not touch Louisiana and was exempted by the laws of both states involved, Mississippi and Arkansas. The Vicksburg Bridge was built in 1930 under a Constitutional tax-exemption of five (5) years.

So, Petitioner now contends that, under those circumstances it is deprived of equal protection of the laws, in violation of the Fourteenth Amendment, because the Supreme Court of Louisiana held that it owned this bridge in a proprietary rather than in a governmental capacity—at least in part since the Vicksburg Bridge is a combination railroad bridge, the railroad half of which is under perpetual lease to one railroad, exclusively, for an annual rental based upon its per-car use.

The Louisiana Supreme Court predicated its decision that the equal protection clause did not apply to a political subdivision of a state—Warren County, Mississippi. But, it could well have rejected the application of the equal protection clause, had an individual or the state itself been involved.

If that contention means to say that a State must tax all property alike or that it may not tax one piece of property without also taxing every other physically similar piece of property or if it means to say that the State may not regard the ownership of property in determining to tax it, then, in either event, the mere statement of any such contentions would seem to afford their own refutation, superficiality and unsoundness.

It is both trite and elementary to point out that the equal protection clause does not prevent reasonable classification of property for the purpose of taxation and such classification is not even reviewable by Courts unless it is palpably arbitrary. Any reasonable and practical basis of classification is proper and constitutionally permissible, even if it results in inequality, inequity or some other ground for classification might appear better.

What is there unreasonable, arbitrary, discriminatory or impracticable in a state law providing that a certain class of property owned by it or its subdivisions or constructed after a certain date shall not be taxes, while property owned by another state or created after a certain time shall be taxed?

All states and taxing authorities grant tax exemptions to some property in order to encourage its construction or development, while like property previously existing is taxed.

Obviously, the purpose and reason for exempting the New Orleans and Baton Rouge bridges is that they are owned by political subdivisions of this State, and are, therefore, public property in the strictest sense. The exemption of the Natchez bridge and all "hereafter constructed" bridges was, of course, to aid in and encourage its construction.

What Petitioner here attempts to contend is that because those bridges are exempt the equal protection clause compels Louisiana to exempt the Vicksburg Bridge which was built many years ago and then itself received a five-year exemption. That contention is to say that every tax-exemption granted, whensoever, to any enter-

prise, must be likewise granted to every other enterprise of the same kind!

That is simply not the law; nor is any such concept the contemplation, meaning or effect of the equal protection clause of the Fourteenth Amendment.

The fact that the classification is inequitable is of no effect, nor that it may be poor or bad discretion, poor economy, may be unwise, unnecessary, or imprudent, result in inequality or even actual discrimination. Those results or factors do not condemn under the equal protection clause, if the basis of that classification be reasonable and not arbitrary or capricious.

The burden rests, not upon Respondent to here warrant and justify this classification, but squarely and solely upon petitioner to prove unreasonableness and to negative every conceivable basis which might be urged to support it. That Petitioner has not even undertaken to do.

N. O. v. LeBlanc, 139 La. 113, 71 So. 248;
Ricks v. Dep't. of Civil Service, 200 La. 341, 8 So. (2d) 49;
Peck v. City of New Orleans, 199 La. 76, 5 So. (2d) 508, 517;
Lindley v. National Carbonic Co., 270 U.S. 61;
Ex parte Tigner, 310 U.S. 141;
Madden v. Kentucky, 309 U.S. 83;
L. & A. Ry. Co. v. Shaw, 121 La. 997, 46 So. 994;
L. & A. Ry. Co. v. Ark. So. Ry., 218 U.S. 431;
Sibley, L. B. & So. Ry. v. Elliott, 136 La. 793;
State v. Union Bldg. Corp., 185 La. 598, 170 So. 7;
American Sugar Refining Company v. State of

Louisiana, 179 U.S. 89, 21 So. Ct. 43, 44, 45 Ed. 102;

Interstate Tax Bureau v. Company, 180 La. 453, 156 So. 463, 465.

Rast v. Van Deman & Lewis Company, 240 U.S. 342, 36 S. Ct. 370, 60 L. Ed. 679;

State Board of Tax Commissioners of Indiana v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 541, 75 L. Ed. 1248;

Quong Wing v. Kirdendall, 223 U.S. 59, 32 S. Ct. 192, 56 L. Ed. 350.

Thus it appears clear that there is nothing of real substance in Petitioner's "equal protection" point.

Therefore, we submit, there is here presented no issue where the validity of any state statute is drawn in question on the ground of its being repugnant to the Constitution of the United States.

The decision of the Louisiana Supreme Court could not have erred as to any ruling upon due process of law because no such issue was raised by the pleadings or pending before it.

The equal protection clause has never been construed to preclude the classification of property by a state for taxation purposes, nor to compel a state to make retroactive as to all such property an exemption from taxation granted to encourage the development of a particular class of property, howsoever owned.

The full faith and credit clause does not compel Louisiana, where tax-exemptions are constitutional solely, to effect a legislative exemption in a statute of Mississippi or even of Louisiana.

No such exemption from taxes is found in the Act of Congress authorizing the construction of this bridge—pretermitting its validity had it so provided.

It is settled by the decisions of this Court that the physical property of an interstate bridge is not commerce at all and its taxation cannot constitute a burden upon interstate commerce, in any event.

Nor does any Act of Congress require this bridge to be made toll-free at any time—or at all except under prescribed conditions. It merely authorizes its acquisition by public authority as a toll bridge and permits the collection of tolls—within its owners' discretion, subject only to supervision by the Secretary of War. Half this bridge structure is a railroad bridge used only by the Illinois Central Railroad, exclusively. There is no contemplation that it will ever become toll-free, nor will the vehicular portion, except as to private passenger vehicles (Tr. p. 72).

No principle of "comity" could deprive any state of its power to tax physical property situated within its borders. Nor is there the slightest equity in petitioner's contention. This bridge earns, net, a million dollars per year. The Louisiana tax here involved was less than $50,000.00 per annum. The Bridge Bond Indenture here provides for the payment in Mississippi "in lieu of taxes" the sum of $25,000.00 per year out of a "Tax Reimbursement Fund" for local taxes in Mississippi. (Tr. p. 72)

VI. *CONCLUSION*

There is nothing of serious or national importance or interest presented by this record. The Fourteenth Amendment was never intended and has never been held to preclude a state from adjusting its system of taxation

in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all. It may impose different specific taxes. The Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the states whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice, and which every state, in one form or another, deems it expedient to adopt. *Cooley on Taxation (4" Ed.) Sec. 249.*

51 Am. Jur. Secs. 559, 560, 561.

> "Although, in the absence of constitutional prohibition, a state or a municipality having general powers of taxation may tax its own property, if it sees fit to do so, in the absence of a manifest intention otherwise, it is a generally accepted principle that the property of a particular body politic, whether used for public purposes or held for the income to be derived therefrom, is not taxable by the same body politic * * * ".
>
> "The exemption of state property extends to the property of all public departments of the state, even though the title is in a board of trustees or in a separate corporation, as it is often the case with a state university or other state institution, and to lands bought by a state at a sale for nonpayment of taxes and held subject to the former owner's right of redemption.
>
> "Property of one state located in another state is held to be taxable where it is situated,

unless there is some agreement to the contrary, since to exempt such property would throw an additional burden on the remaining property in the same taxing district and thus cause the owners of such property to be taxed for the benefit of another state".

State ex rel Taggart vs. Holcomb, 116 Pac. 251.

" * * * when a city of the state of Missouri comes into Kansas, it comes as a private party and brings with it none of the prerogatives of sovereignty. The general rule is that all property, not expressly exempted, is taxable, and the fact that the state does not tax itself and its municipalities to obtain revenue for itself is no reason why a foreign municipality who is here in the capacity of a private proprietor, and whose property receives protection from the state, should contribute nothing towards that protection or should escape paying the taxes imposed upon other owners of property. It is clear that the exemptions from taxation, provided for the state and for cities and municipalities of the state, are only declaratory of the immunity that would be granted on fundamental principles of government, and that the cities and municipalities referred to in the statute and Constitution are those of our own state.

"The fact that municipalities of another state, which become proprietors in Kansas, are not accorded exemption from taxation, is no basis for the claim that the interpleader is denied the equal protection of the laws or deprived of property without due process of law in violation of the federal Constitution".

The ultimate fact here is inescapable and undeniable. Petitioner presently collects tolls from all motor vehicles, railroad cars, pipe lines, telephone and telegraph cables, commercial vehicles and everyone and

everything moving over this bridge, except pedestrians.

When the outstanding revenue bonds are paid or reduced to a level which will enable them to be eventually retired from tolls from railroad and utility and commercial vehicle use, it is contemplated that no tolls will be thereafter collected from private passenger vehicles but tolls will, thereafter for all time, continue to be collected from all commercial vehicles, utilities, railroad cars, pipe lines, cables, etc., so, that, Petitioner will continue to benefit, solely, by the net profit of several hundred thousands of dollars per year.

THEREFORE, petitioner is not here performing a purely public service or governmental function. It has made a very profitable investment by acquiring the ownership of physical property situated within the State of Louisiana, Parish of Madison. No reason or concept of equity, justice of fairness support its effort to escape the payment of its fair share of the *ad valorem* tax burden.

There is no merit in this application for certiorari, which should not be allowed, for either legal or equitable reason.

Respectfully submitted,

FRED. G. HUDSON, JR.,
Monroe, Louisiana,
THOMPSON L. CLARKE,
District Attorney,
St. Joseph, Louisiana,
Attorneys for Respondents.

HUDSON, POTTS, BERNSTEIN
& DAVENPORT,
Of Counsel.